

APPEAL NO. 030904  
FILED JUNE 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 15, 2003. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 12th quarter. Appellant (carrier) appealed the determinations related to good faith and ability to work and also contended that the hearing officer erred in excluding two reports. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order. Carrier did not appeal the direct result determination in claimant's favor and that determination has become final. Section 410.169. The Appeals Panel reversed the hearing officer's decision and remanded the case for the hearing officer to make a finding regarding whether there was good cause for the late exchange of the two exhibits in question. The Appeals Panel also remanded for reconsideration of the good faith and SIBs entitlement issues. Texas Workers' Compensation Commission Appeal No. 030264, decided March 26, 2003. On remand, the hearing officer determined that carrier did not have good cause for failing to timely exchange the two exhibits in question. The hearing officer also determined that, even if the two exhibits had been admissible, "they are not persuasive since Claimant was examined on December 16, 2002 and the qualifying period ended on November 5, 2002 and since Claimant's condition could have drastically changed in a period of more than a month." Carrier again appeals, contending that the hearing officer erred in excluding the two exhibits and in determining that claimant had no ability to work and is entitled to SIBs. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends that the hearing officer erred in excluding Carrier's Exhibit Nos. 7 and 8, which were an undated medical report from Dr. B (new report) and a Work Status Report (TWCC-73) from that same doctor dated December 16, 2002. The hearing officer did not make a good cause ruling at the first hearing, but on remand he determined that carrier did not have good cause for the late exchange of these two exhibits. At the hearing, carrier stated that Dr. B was not able to get the new report and TWCC-73 to carrier before January 13, 2003. Carrier represented that it received Dr. B's new report and the TWCC-73 on January 13, 2003, and sent a copy by overnight delivery to claimant. Claimant said she received the exchange on January 14, 2003, one day before the hearing. In deciding the good cause issue, the hearing officer may consider, among other things, whether the party offering the evidence intentionally delayed the receipt of the document or had the document earlier than represented. See Texas Workers' Compensation Commission Appeal No. 991714, decided September 22, 1999. The hearing officer may also consider whether diligent efforts were made to obtain the report or document so that it might be exchanged as soon as possible. See

Texas Workers' Compensation Commission Appeal No. 982687, December 31, 1998; Texas Workers' Compensation Commission Appeal No. 982422, decided November 30, 1998. Carrier did not state at the hearing what efforts were used to obtain the new report and TWCC-73 at an earlier time. We perceive no abuse of discretion in the hearing officer's evidentiary ruling.

Carrier contends the hearing officer erred in determining that claimant had no ability to work during the qualifying period. Carrier asserts that the September 24, 2002, report from Dr. D is not an adequate narrative. However, the hearing officer could interpret the report from Dr. D as stating that claimant has no ability to work due to her compensable injury. The hearing officer could find that the report adequately explains why claimant had no ability to work at all. The hearing officer could also find from the record that "no other records show that the injured employee is able to return to work." See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 103.102(d)(4) (Rule 130.102(d)(4)). We also perceive no error in Finding of Fact No. 7. This finding of fact clearly concerns the direct result prong of Rule 130.102(c), which was not at issue on remand. We conclude that the hearing officer did not apply the wrong standard in considering the issue of good faith and ability to work.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Margaret L. Turner  
Appeals Judge